

**IN THE COURT OF THE ADDL CIVIL JUDGE
AND J.M.F.C., AT MUDIGERE**

:PRESENT:

**Sri.Harisha.K.M., B.A., LL.B.,
ADDL CIVIL JUDGE & JMFC,
MUDIGERE**

DATED THIS THE 23rd DAY OF JUNE 2021

O.S. No.114/2019

PLAINTIFF: Sri M.L.Kallesh,
S/o.Laxmana gowda,
Aged about 60 years,
Agriculturist,
R/a Makonahalli village & post,
Kasaba Hobli,
Mudigere Taluk.

(By Sri.Siddaiah D., Advocate)

V/s.

DEFENDANT: 1. Sri M.L.Sukesh,
S/O.M.T.Laxmangowda
Aged about 63 years,

2. Sri M.S.Achal,
S/O.M.L.Sukesh
Aged about 28 years,

3. Sri M.S.Laxmesh,

S/O.M.L.Sukesh,
Aged about 25 years,

All are R/a Makonahalli village
& post, Kasaba Hobli,
Mudigere Taluk.
Now R/a Achal Cable ,
40 feet service road,
Manjunatha Nagara,
Rajajinagara,
Bangalore.

(By Sri.H.S., Advocate)

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PARTIES ON I.A.No.II

APPLICANT: Sri M.L.Kallesh

V/s.

OPPONENT: Sri M.L.Sukesh and 2 others

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ORDERS ON I.A.No.II

I.A.No.II under order 39 rule 1 and 2 CPC filed by the plaintiff seeking the relief of temporary injunction by restraining the defendants or any other persons claiming through them from trespassing the schedule property by

removing the fence, dispossessing the plaintiff from the schedule property and caused act damage to the schedule property till the disposal of the suit.

2. The said application is annexed with the affidavit of the plaintiff wherein he has stated that he is the owner in possession, occupation and enjoyment of the schedule property having acquired the same under the grant certificate from the government and since the date of grant he is in possession, occupation, cultivation and enjoyment of the schedule property and cultivated the same with anthodium plants, coffee, silver trees and some jungle woods and he has fenced the same all around. The defendants have no manner of right whatsoever over the schedule property. That on 07.09.2019 the defendants tried to interfere with the schedule property by removing the fence and the illegal acts of the defendants resisted with great difficulty, that the threat of the defendants is still continuing and the act of the defendants cannot be resisted without the assistance of the court, hence, it is prayed to allow the application.

3. After the service of summons, the defendants appeared through their counsel and defendant No.1 filed objection to the I.A.II by way of affidavit, wherein he has

denied the entire plaint averments. It is denied that the plaintiff is the grantee in possession of the schedule property and cultivating the same with plants and fenced the same all around. The alleged interference is also denied. It is contended that the defendant No.1 is in unauthorized occupation and cultivation of the written statement schedule property since 1985 and constructed one poly house, one green house, two portioned mangalore tiled house, one tractor shed, one electricity generator with 10 HP motor and one flower grading hall, one office room, one water tank and also dug borewell in the written statement schedule property and he has made an application under form No.57 for regularization of his unauthorised occupation. It is further contended that plaintiff is his brother and on 10.6.1985 family partition has been effected in his family and accordingly, kathas have been mutated. Recently he came to know that the house constructed by him for his parents in Sy.No.285 was illegally got included by the plaintiff in his land. Since this defendant raised objection for phodi of Sy.No.416, the plaintiff tried to harass this defendant by trying to encroach upon the written statement schedule property and threatened to destroy the anthurium plants. The plaintiff by making false claim of growing anthurium plants over Sy.No.416/3 (old Sy.No.285) obtained

an order of ex parte T.I. and taking advantage of the said order, trespassed into the written statement schedule property on 14.10.2019 and tried to lock the houses and flower grading room and also to disconnect the electricity connection and in this regard he has already filed suit in OS.No.128/2014 against the plaintiff and M.L.Dinesh. The boundaries furnished by the plaintiff are incorrect and if the I.A. is allowed, the defendants will be put to greater hardship, and inconvenience, hence, it is prayed to dismiss the application.

4. On the basis of above pleadings, the following points arise for my consideration:

1. Whether the plaintiff has made out prima facie case?
2. Whether the plaintiff has made out that balance of convenience lies in his favour?
3. Whether the plaintiff has made out that if temporary injunction is not granted, he will be put into great loss or hardship?
4. What order?

5. Heard arguments. Perused the materials on record, on that basis my findings on the above points are as under:

Point No.1 to 3 : In the Affirmative,

Point No.4: As per final order,
for the following reasons:

REASONS

6. **POINT No.1** The counsel for the plaintiff vehemently argued that the plaintiff is the owner in possession, occupation and enjoyment of the schedule property and cultivated the same with anthurium plants, coffee, silver trees and some jungle woods and he has fenced the same all around. The defendants having no manner of right whatsoever over the schedule property on 7.9.2019 tried to interfere with the schedule property by removing the fence and the illegal acts of the defendants resisted with great difficulty, that the threat of the defendants is still continuing and the act of the defendants cannot be resisted without the assistance of the court, hence, it is prayed to allow the application.

7. The counsel for the defendant argued that the plaintiff making false allegations against the defendant and

trying to take possession of the land which is in possession of the defendant which is more fully described in the written statement schedule. The first defendant is in unauthorised occupation and cultivation of the written statement schedule property since 1985. The written statement schedule property belongs to the State and the 1st defendant cultivated the same with coffee and he has constructed a poly house , one green house, two portioned mangalore tiled house, one tractor shed, one electricity generator with 10 HP motor and one flower grading hall, one office room, one water tank and also dug borewell in the written statement schedule property and he has made an application under form No. 57 for regularisation of his unauthorised occupation, which is pending for consideration. The plaintiff has furnished wrong boundaries to the plaint schedule property by including the written statement schedule property, the western boundary of the land of the plaintiff in Sy.No.416/3 is the written statement schedule property. But, by showing false boundary the western side property has been including to as to include written statement schedule property. The plaintiff trying to dispossess the defendant from written statement schedule property. It is further argued that the plaintiff and M.L.Dinesh are causing lot of hardship to the defendants, the defendant also filed suit in OS.No.124/2019 , the second

defendant also filed suit in OS.No.126/2019 against the plaintiff and M.L.Dinesh when they caused interference over the possession of his land. It is further argued that the plaintiff is not in possession of the enjoyment of schedule property, the plaintiff by creating documents is trying to make false claim over the properties of the defendants, on all these grounds he prayed to reject the IA.No.II filed by the plaintiff.

8. The plaintiff has produced saguvali chit pertaining to Sy.No.285 measuring 4.38 acres, situated at Makonahalli, Mudigere taluk, which shows that the said Survey number has been granted in the name of the plaintiff by issuing saguvali chit. M.R extract which reveals that the katha of the Sy.No.285/p1 has been mutated in the name of the plaintiff. RTC extract in respect of the schedule property reveals that the name of the plaintiff is shown as possessor and cultivator. Tax paid receipts issued in the name of the plaintiff. He has also produced two photos and receipt patta book and CRC in support of his case, atlas copy in respect of the schedule property, letter, crop confirmation certificate, requisition for flood relief, application given by the plaintiff to the horticulture department, Mudigere.

9. The defendants have produced 3 RTC extracts in respect of Sy.No.306/p1 306/p2 and 416/3, jubane hisse palu parikathu dated 30.4.2002, copy of the palu patti, copies of the SFAC letters dated 21.2.2006 and 15.9.2005, letter of national horticulture board, certificate, statements of accounts of the defendant No.1, satellite map, 8 photographs, CD, Affidavit of the defendant no:1, Two Copies of Notice and Atlas nakalu pertaining to suit schedule property.

10. On perusal of the documents produced by the plaintiff, it prima facie shows that the suit schedule property has been granted in his name and the katha has been entered in his name and he is in possession and enjoyment of the suit schedule property. The defendants have taken specific contention that defendant No.1 is cultivating written statement schedule properties with Anthorium plants. The defendant have produced the affidavits of the defendant No.1 and other three persons, the same cannot be considered at this stage. Therefore, on prima-facie perusal of the documents the plaintiff is in possession of the suit schedule property. The specific contention taken by the defendant about location of the property, boundaries and the plaintiff created the documents, cannot be decided at this

stage without holding a full fledged trial of the both parties and examining all the documents. At this point of time these disputes cannot be looked into by this court. The plaintiff has produced necessary documents to show that the suit schedule property has been granted and mutated the katha and entry the RTC in his name. This shows that he has made out prima-facie case. Accordingly, I answer the point No.1 in the Affirmative.

11. **Points No.2 and 3:-** As already stated above, the plaintiff has made out prima-facie case, so we need to see as to where the balance of convenience lies. So we have to see if Temporary Injunction is granted who will be put to more inconvenience. If the plaintiff is going to be put to great inconvenience if the Temporary Injunction cannot be granted against the defendants.

12. On perusal of the pleadings of the both parties the description of the schedule properties are different. The defendant No.1 has filed suit in OS.No.128/2019 in respect of written statement schedule property, which is admittedly adjacent to the property of the plaintiff. The plaintiff apprehends that the defendants may encroach upon the schedule property. Under the circumstances, to protect the interest of the plaintiff, in this case, if the temporary

injunction order is granted in favour of the plaintiff in respect of the schedule property, no hardship is going to be caused to the defendants. On the other hand, if the order is not granted, the plaintiff will be put to much inconvenience as there is every chance of defendants causing injury to the plaintiff by interfering with his possession of the suit schedule property. Therefore, it can be seen that the balance of convenience lies infavour of the plaintiff and if temporary injunction is not granted great hardship and loss would be caused to the plaintiff. Accordingly I answer the point No.2 and 3 in the Affirmative.

13. **Point No.4** :- In view of the findings on the above points, the following order is passed :-

ORDER

I.A.No.II filed by the plaintiff under O.39 R.1 and 2 seeking for the relief of temporary injunction is hereby allowed.

The defendants, their agents, servants or any other persons are hereby temporarily restrained from trespassing into the schedule property by removing the fence, dispossessing the plaintiff from the schedule property or from

causing acts of waste of damage, till disposal
of the suit.

(Dictated to the Stenographer, transcribed by her, then
corrected by me and pronounced in the open court on this
the 23rd day of June 2021)

(Harisha K.M.)
Addl.Civil Judge & JMFC.,
Mudigere.

*mvp/-